IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Writ Petition No.1068 of 2007

Ram G. Deo & Brothers & ors. Petitioners
Vs.
Jaywant Sadashiv Elvande Respondent

Mr.R.S.Apte with Mr.Girish Prayani for petitioners.
Mr.V.S.Gokhale for respondent.

CORAM: B.H.MARLAPALLE, J.

June 21, 2007.

P.C.

. Heard Mr.Apte with Mr.Prayani, the learned counsel for the petitioners, appellants in Civil Appeal No.114 of 2006 passed by the lower Appellate Court rejecting the application at Exhibit 12 filed in the pending Appeal No.114 of 2006.

. The landlord had filed Regular Civil Suit No.260 of 2000 against the tenant for seeking the possession of the suit premises. The tenant also filed Regular Civil Suit No.255 of 2000 seeking a decree of permanent injunction against the landlord. The trial Court dismissed the tenant's suit i.e. RCS No.255 of 2000 and it allowed the landlord's suit i.e. RCS No.260 of 2000 and passed the decree of eviction. The tenant has, therefore, filed Civil Appeal No.114 of 2006 and challenged the preliminary

decree of eviction. The appeal has been admitted and the decree of eviction has been stayed during the pendency of the appeal.

. The application at Exhibit 12 was filed by the appellant-tenant on the ground that there was a fresh cause of action inasmuchas on 16/2/2006 the landlord had caused interference in conducting the business by the defendants and, therefore, there was a reason to seek an injunction against the landlord so as to refrain from causing disturbance / interference in conducting the business from the suit premises during the pendency of the appeal.

. The lower Appellate Court noted that the tenant's independent suit seeking permanent injunction against the landlord was dismissed and the said order had reached finality because the decree passed by the trial Court in the said Suit was not challenged in the appeal. The decree of eviction was stayed in Civil Appeal No.114 of 2006 at the instance of the tenant and once the suit for permanent injunction was dismissed, it would not be permissible for the tenant to seek such a relief in the suit filed by the landlord.

. The reasoning set out by the lower Appellate Court in rejecting the application filed at Exhibit 12 cannot be termed as patently erroneous or perverse so as to cause interference in a petition under Article 227 of the Constitution. Interests of the parties would be better served if the pending appeal is heard and decided on its own merits expeditiously.

. Hence the petition is rejected summarily and it is directed that Civil Appeal No.114 of 2006 be heard and decided as per law as expeditiously as possible and preferably by 31st December 2007.

(B.H.MARL